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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re E.D., a Person Coming Under the  
Juvenile Court Law.

H044976  
(Santa Clara County  
Super. Ct. No. JD024145)

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

E.D.,

Defendant and Appellant.

In October 2016, the Santa Clara County Department of Family and Children's Services (Department) filed a petition under Welfare and Institutions Code section 300, subdivisions (b)(1), and (g)<sup>1</sup> relative to a young boy, E.D. (age one; the minor). The Department alleged that the minor's mother, E.D. (mother), had been arrested for driving under the influence of alcohol and for child endangerment. There was no available caretaker for the minor, who had been unrestrained in the car and fell into the floorboard when mother collided with a parked patrol vehicle. At the time of the incident, mother

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

was on felony probation after having been convicted of battery in March 2016. The Department alleged that mother had untreated substance abuse issues. The whereabouts of the alleged fathers were unknown.

The juvenile court ordered the minor detained, and in November 2016, it sustained the allegations of the petition, as amended, ordered the minor's removal, and declared him a dependent child of the court. It ordered that mother receive family reunification services and supervised visitation.

One of the alleged fathers, J.C., appeared for the first time at an April 2017 hearing. At the hearing, the Department advised the court that, unbeknownst to the Department, there was a separate child support action involving the minor that had been pending since March 2016 but mother had not advised the Department of its existence. The Department's counsel stated that J.C. had been in contact with the County of Santa Clara's counsel in the support action, and J.C. had completed his portion of paternity testing; mother, however, had not participated in the testing. The juvenile court ordered completion of the paternity testing, and on May 30, 2017, it declared J.C. the minor's biological father and ordered that he receive visitation.

A contested six-month review hearing took place on July 31, 2017. The court, after hearing evidence and argument of counsel, adopted the recommendations of the Department in orders dated August 1, August 2, and August 2, the last order being filed August 7, 2017 (the three orders are hereafter collectively referred to as the juvenile court's order). The court ordered that (1) mother's request that the minor be returned to her care be denied, (2) the dependency proceeding be dismissed, (3) sole physical custody be awarded to J.C., (4) joint legal custody be awarded to J.C. and mother, and (5) mother receive unsupervised visitation. Mother appealed the juvenile court's order. We will affirm.

## **I. FACTS AND PROCEDURAL HISTORY**

### **A. Petition, Initial Report, and Detention Order (October 2016)**

On October 12, 2016, the Department filed a petition on behalf of the minor under subdivisions (b)(1) and (g) of section 300. The Department alleged, under subdivision (b)(1) of section 300, that the minor was at substantial risk of suffering severe emotional damage due to mother's failure to protect the minor. On October 7, 2016, after mother was arrested for driving under the influence of alcohol and child endangerment and there was no available caretaker, the minor was placed into protective custody. At the time of mother's arrest, the minor was not properly restrained in the vehicle, and as a result, he struck the windshield and fell to the floorboard. Mother had been previously (on March 29, 2016) convicted of battery (Pen. Code, §§ 242/243, subd. (a)). The conviction arose when she, while under the influence of alcohol, assaulted the minor's maternal grandmother by punching her in the face and pulling her hair. Mother had been required to enroll in a 52-week substance abuse program but had failed to do so.

Mother had an untreated substance abuse issue that placed the minor at risk of harm while he was in her care. She "often [went] on drinking binges with the child in her care." Mother had denied that she had any issues with alcohol abuse.

The Department alleged that the whereabouts of the alleged fathers of the minor, J.C. and R.C., were unknown.

The Department alleged, under subdivision (g) of section 300, that mother had been arrested on October 7, 2016, there had been no available caretaker at the time, and the whereabouts of the alleged fathers were unknown.

In its initial report filed October 13, 2016, the Department provided further details of the matters leading to the detention of the minor. As stated in the police report, at approximately 8:00 p.m. on October 7, 2016, an accident occurred on Coleman Avenue in San Jose when mother's vehicle collided with a parked San Jose Police Department patrol

car. Officers found the minor “wedged between the rear passenger seat and front driver seat (on the floorboard).” The minor was not restrained in the child car seat and the car seat was not secured by a seatbelt. Mother was given breathalyzer tests at the scene and the results were that she had a blood-alcohol concentration of 0.152 percent and 0.160 percent. Mother and the minor were transported to Valley Medical Center for medical evaluation, and it was reported that the minor was uninjured. Mother was placed under arrest for child endangerment and driving under the influence.

Responding social workers spoke with San Jose Police Sergeant Nguyen and Officer Tran on the evening of the incident. Sergeant Nguyen advised that mother had admitted having had two glasses of wine. Sergeant Nguyen stated that a CT scan had been performed on mother, who was then six-months pregnant, and the results were apparently normal. Officer Tran advised that mother was on probation for a battery conviction.

A social worker spoke to mother in Sergeant Nguyen’s presence. Mother stated that she had driven from San Francisco, where she had taken the minor to see planes. She admitted that she had been texting while driving when the accident occurred, and that she “ ‘couldn’t stop on time [*sic*].’ ” (Mother later told a social worker that she had been driving approximately 30 to 40 miles per hour when the accident occurred.) Mother said she had consumed two glasses of wine earlier in the day and “felt she was ‘okay’ to drive.” She “stated that it is ‘allowed to have two glasses of wine while pregnant.’ ” Mother also said “that she ‘never drinks,’ ” she did not use drugs or have an alcohol issue, and that alcohol had not been a problem for her for a year.

A social work intern with the Department spoke with mother’s probation officer, Melissa Rice, on October 12, 2016. Officer Rice advised that mother was arrested on January 1, 2016, after she had punched the maternal grandmother, R.D., in the face and pulled her hair. R.D. told police officers that mother had been drinking the day of the

assault.<sup>2</sup> Officer Rice said that after mother's conviction on March 29, 2016, she was granted probation with conditions that she enter a substance abuse program, a 52-week batterer's intervention program, and that she be tested for substances.

Officer Rice reported to the Department that the maternal grandmother had contacted her several months after mother's conviction to express concern that mother had been struggling with her sobriety. R.D. also told Officer Rice that when mother " 'goes out binge drinking, she disappears with the baby for days,' " and R.D. suspected that mother and her baby at those times lived on the streets. Officer Rice reported that mother had been arrested on August 2, 2016, for violating the terms of her probation by failing to provide proof of enrollment in both batterer's intervention and substance abuse programs and for missing an appointment with Officer Rice. Mother was incarcerated and released on September 2, 2016. Officer Rice expressed concern to the Department about "mother's 'escalating behavior' and stated that [mother] 'needs residential treatment.' " Officer Rice also advised that mother had told her in the past that it was difficult for her to maintain sobriety when she was living in the maternal grandmother's "home[] where there is a lot of drinking."

In an interview with the Department on October 11, 2016, mother stated that there were two individuals, J.C. and R.C., who could be the minor's father. Mother had a relationship with J.C. for approximately two months, and he knew that she was pregnant at the time of their breakup. Mother had a relationship with R.C. that overlapped her relationship with J.C. R.C. was aware of the minor's existence but denied he was the father. Mother told the Department she did not know the whereabouts of J.C. or how to contact him. She also said that she did not know the whereabouts of R.C.

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<sup>2</sup> In a subsequent report filed by the Department, it was noted that the minor was present in the home at the time mother assaulted R.D.

On October 13, 2016, the court found that a prima facie showing had been made that the minor came within section 300. It ordered the minor detained, that temporary placement be vested with the Department, and that mother receive supervised visitation of at least two hours per session two times per week.

**B. Amended Petition (November 2016)**

On November 15, 2016, the Department filed an amended petition. The amended petition included additional specifics concerning the accident and mother's blood-alcohol concentration at the time, and deleted a reference in the original petition to the minor's having struck the windshield during the incident.

**C. Jurisdiction/Disposition Reports and Hearing (November 2016)**

In its November 2016 jurisdiction/disposition report, the Department repeated and elaborated upon the allegations in the amended petition. The Department reported that it had made a number of efforts to locate the possible fathers of the minor, J.C. and R.C., but had not been successful.<sup>3</sup>

Social worker Taylor Tran met with mother on October 11, 2016. Mother stated that she was receiving treatment at a perinatal substance abuse program after entering it on October 3. She indicated that "[w]hile she does not believe that she has an issue with alcohol abuse, she entered treatment to 'prevent it [drinking on weekends] from coming back.'" Mother admitted to "feeling 'depressed'" and that she "turn[ed] to alcohol to cope with that depression and to replace her meals." She reported that she had begun drinking when she was 15 years old. (Mother was 32 years old when the petition was filed.) Mother's drinking progressed after her "surgery in August 2012[,] and she admitted to 'drinking more.'" Mother advised that after her conviction in March 2016

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<sup>3</sup> The Department also reported that mother had advised it on October 19, 2016, that there was a third individual, identity and whereabouts unknown, who was possibly the minor's father.

arising out of assaulting R.D., she had been incarcerated twice for violating probation; she was detained in March and August 2016, for 30 days in each instance.

In an interview with a social worker intern approximately one week later, mother disputed R.D.'s claim that mother went on drinking binges while caring for the minor. Mother stated that on two occasions in 2016 she had gone out to have three or four cocktails, but that the minor was not with her on either occasion. Mother disputed that she had placed the minor at risk of harm.

In an interview on October 13, 2016, the minor's maternal grandmother, R.D., advised the Department that mother was diagnosed with bipolar disorder when she was 16 years old. Because of this condition and depression, mother could not control her drinking. R.D. stated that in September 2016, mother " 'went drinking' instead of going to her appointment with Probation Officer Rice." She also said that mother had had gastric bypass surgery in 2012, and R.D. described some medical problems that mother experienced in 2016, including hospitalizations, that R.D. said may have contributed to mother's noncompliance with her probation conditions.

R.D. told the Department that mother had not had access to a car since the minor was born (in July 2015). Due to her concerns about mother's drinking, R.D. had taken the keys away from mother, had taken the battery out of the car, and had registered it as inoperable; R.D. said she had "not want[ed] 'something like this' to happen." R.D. advised that after mother had been attending a substance abuse program for two weeks, R.D. (in October 2016) had returned the car to mother; two days later, she crashed it into a parked patrol vehicle.

The Department was informed on October 14, 2016, by Probation Officer Rice that mother on that day had been arrested again for violating the terms and conditions of her probation. Her hearing was set for November 4, 2016, and Officer Rice advised that mother would be sentenced to serve additional jail time if she were found to be in

violation of her probation conditions by committing a new criminal act, consuming alcohol, and leaving Santa Clara County without advance permission.

The minor was at the time living in an emergency satellite home in Santa Clara County and was doing well in that nonconcurrent placement. R.D. advised that she would like to have the minor placed in her care. She supported reunification of the minor with mother, but if that failed, R.D. stated a willingness to provide a concurrent home for the minor. The Department was in the process of assessing R.D.'s home for potential placement.<sup>4</sup>

The Department recommended that the minor remain in out-of-home care and that mother receive reunification services and mental health services.

In an addendum report, the Department advised that mother had been released from custody on November 12, 2016. In a subsequent addendum report, the Department stated that while she was in custody, mother had participated in a Reentry Correction Program, a Parents and Children Together Parenting Program, and Alcoholics Anonymous (AA) meetings. Mother had also been engaged in supervised visitation with the minor beginning on November 18, and the visits had been positive.

A jurisdictional/dispositional hearing took place on November 29, 2016. The court sustained the allegations of the petition, as amended, and it declared the minor to be a dependent of the court in out-of-home placement. The court granted family reunification services to mother, and it ordered supervised visitation for mother of a minimum of two times per week, two hours per visit. It further ordered that mother (1) attend a parent orientation class, a parenting class, counseling, a 12-step program, an aftercare drug treatment program, and a 52-week batterer's intervention program; (2) obtain a substance abuse assessment; (3) develop an aftercare relapse prevention plan;

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<sup>4</sup> There was a reported complication in the placement assessment: A maternal uncle living in R.D.'s home had a criminal history that included multiple convictions, thus necessitating a director's waiver for placement approval.



and (4) submit to weekly testing for alcohol and controlled substances. The court scheduled a six-month review hearing for May 16, 2017.

**D. Mother's Request to Change Court Order (April-May 2017)**

**1. *Mother's Request***

In April 2017, mother filed a Judicial Council form JV-180 request to change court order under section 388 (hereafter request). She alleged that she had continued to maintain sobriety and had "been steadily progressing at a residential treatment program with continued services." Mother requested that the minor be placed with her in her residential treatment program with family maintenance services.

**2. *Department's Interim Report***

The Department submitted an interim review report April 17, 2017 (dated April 13 & 14, 2017), in anticipation of a contested hearing on mother's request. It reported that the minor was thriving in the custody and care of the maternal grandfather (where he had been placed in December 2016). Mother had been remanded into custody on March 29, 2017, after having been charged with misdemeanor driving under the influence and felony child endangerment; she was released on bail the same day. The Department reported that she was doing better after entering an inpatient drug treatment program.

Mother completed a court-ordered drug and alcohol assessment in November 2016 and was referred to an outpatient drug treatment program. Mother requested an inpatient treatment program and entered PW Mariposa on December 12, 2016. She reportedly did well in the program, and later advocated receiving inpatient services at Parisi House on the Hill (House on the Hill). She was admitted into that program on January 19, 2017, where she was reportedly doing well. Mother gave birth to her daughter shortly after entering House on the Hill.<sup>5</sup>

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<sup>5</sup> The record reflects that there was a separate dependency case involving this child, and that it had been closed in or prior to April 2017 with the child's father being awarded custody.

Mother advised the Department in January 2017 that she was receiving counseling services and had attended two appointments with a psychiatrist. In February, mother advised the Department that she had changed therapists and she would provide the Department with the therapist's contact information. In the month and one-half that followed, mother repeatedly disregarded the Department's efforts to obtain the therapist's contact information and a release of information signed by mother.

The Department advised that mother had participated in court-ordered, weekly random testing and had received negative results for all tests taken while she was at Mariposa and later at House on the Hill. Mother had also complied with the requirement that she attend at least two 12-step meetings per week; she had a new sponsor and had begun working the steps.

Mother had participated consistently in supervised visitation with the minor at two-hour sessions, twice per week, as ordered; the visits were supervised by the maternal grandfather. In March 2017, the Department began to permit four-hour unsupervised visits at House on the Hill. The Department reported the minor "appear[ed] to have a healthy bond and attachment with his mother and she appropriately [met] his needs during visits."

The Department commended mother's efforts and commitment to sobriety over a five-month period. It stated, however, its concern about mother's "history of minimizing her alcohol use and the impact on her ability to parent her child given her risky choices. . . . Despite her success in [drug treatment] programs . . . , [mother] is still in the early stages of her sobriety. She has not demonstrated her ability to remain clean and sober outside of the structure of an inpatient drug treatment program." The Department advised further that mother had not fully addressed her mental health needs, and the Department had not been able to assess her progress with therapy.

### **3. *Court Orders***

The alleged father, J.C., appeared with counsel on April 17, 2017, the date initially set for a hearing on mother's request to change court order. The Department advised it had recently learned that there had been a separate support action initiated by the County of Santa Clara in March 2016, naming J.C. as the alleged father. The Department's counsel stated that mother had previously told the Department that she had no information regarding J.C.'s whereabouts, "although that is contained clearly within the child support case that is pending." The Department's counsel contended that mother had "not notif[ied] anyone that there was a child support case pending." He stated further that counsel handling the child support case had said that (1) J.C. had been in contact several times; (2) J.C. had completed his portion of paternity testing; (3) mother had been in contact; (4) mother had not participated in child support testing; and (5) mother had not advised that the minor was not in her custody. The court continued the matter and ordered that paternity testing be completed.

On May 9, 2017, the court noted that it had received a copy of a criminal protective order of May 3, 2017, that restrained mother from contact with the minor, except for peaceful contact during court-ordered visitation. The juvenile court concluded that it was precluded by the restraining order from entering a family maintenance order as sought in mother's request, and it therefore denied without prejudice mother's request to change court order. It also continued the six-month review hearing to May 30, 2017.

On May 30, 2017, the court declared J.C. to be the minor's biological father. It ordered that father receive weekly supervised visitation of two hours' duration, with the Department given the discretion to increase the frequency and duration of visits, to select the location of the visits, and to change visits to unsupervised visits and to permit overnight visits. The court further continued the matter for a contested six-month review hearing on July 31, 2017.

**E. Six-Month Review Reports, Hearing and Order (July 2017)**

**1. *Department's Reports***

**a. May 16, 2017 Report**

The Department submitted a status review report May 16, 2017 (dated May 4, 2017), in anticipation of the six-month review hearing. It reported that on May 1, mother had concluded her time at House on the Hill, and she had moved to a transitional housing unit (THU) through Solace Supportive Living, a six-month program that permitted children to stay with parents either through visitation or reunification. Social worker Terese Knapp expressed some concerns about mother's lack of cooperation with the Department shortly after moving to the THU, citing difficulty in mother's making herself available for a scheduled meeting and agreeing to provide her cell phone number to Knapp.

Social worker Knapp spoke with mother's psychiatrist, Catherine Reed, and her therapist, Anabelle Drda. Dr. Reed stated that mother had recently been doing well and had demonstrated improvement since her treatment began in June 2016. She had met with mother five times during the dependency proceedings. Dr. Reed indicated that mother's current diagnosis was "Major Depressive Disorder, recurrent and in remission and [a]lcohol dependence in remission." Dr. Reed had prescribed Zoloft, and she stated that the therapy and prescription appeared to be effective. Drda advised Knapp that mother had met with her regularly, had communicated well, and had expressed that she "want[ed] help 'remaining sober and . . . get[ting] her children back.'" Both Dr. Reed and Drda advised that mother had not been completely forthright about the details of the incident that had resulted in the dependency proceedings.

The Department advised that between January 19 and April 11, 2017, mother had had 12 random drug tests, all with negative results. Mother had also tested on May 3, 2017, with negative results.

Mother participated consistently in supervised visitation with the minor twice per week, two hours per session, with the maternal grandfather as the supervisor. Beginning on March 2, 2016, mother began having four-hour unsupervised visits at House on the Hill, as well as two-hour Wednesday visits supervised by the maternal grandfather. The visits reportedly went well.

The Department interviewed J.C. in early May. He stated that he had met mother in the summer of 2014, and in the fall, they had rented an apartment together in Citrus Heights. At that time, he observed mother's ongoing alcohol use. Near Thanksgiving of 2014, mother, who was under the influence of alcohol, struck J.C. in the back of the head in the presence of J.C.'s daughter. J.C. called the police; although no police report was taken, the police asked J.C. to leave because of mother's intoxication. J.C. called R.D. the next day to pick up her daughter; at that point, J.C. and mother were no longer a couple.

J.C. advised that in early 2015, mother called him to report that she was pregnant, saying J.C. was the father. Mother then repeatedly called and texted J.C.; she later told J.C. that she had cheated on him and he might not be the father. J.C. at that point asked for a paternity test, but mother did not agree to one. J.C. told the Department he had not learned about the minor's birth until the minor was a few months old. In January 2016, J.C. was contacted by the child support agency because mother had applied for assistance. J.C. requested a paternity test, and he completed his sample in the summer of 2016.

The Department advised that J.C. lived with his fiancée, their one-year-old daughter, and his fiancée's five-year-old daughter in a Citrus Heights apartment. J.C. advised that he had been honorably discharged from the Air Force, and that both he and his fiancée had jobs. He disclosed that he had two driving under the influence arrests which had resulted in misdemeanor convictions. The first conviction occurred in 2004 in New Jersey and resulted in his paying fines but not attending classes. The second

conviction was in 2008; he had his driver's license suspended for two years and completed approximately one year of alcohol classes.

The Department conducted a search of J.C.'s criminal record and located only one arrest and conviction; it involved a conviction of driving under the influence under California law. The Department also determined there was "no reported CPS [child protection services] history for [J.C.] or for any of his children."

The Department again commended mother's commitment to sobriety. It observed, however, that mother, until recently, had struggled to comply with her probation conditions, and there was uncertainty as to the potential impact upon mother of the criminal charges currently pending against her. The Department also expressed concern that mother had "a history of minimizing her alcohol use and the impact on her ability to parent her child given her risky choices." It stated that mother was "still in the early stages of her sobriety and . . . ha[d] not demonstrated her ability to remain clean and sober outside of the structure of an inpatient drug treatment program." The Department noted further that mother had "not fully addressed her mental health needs" and "may not have been completely forthright with her treatment psychiatrist and therapist about her dependency case and the child endangerment charges."

Accordingly, the Department concluded it would be detrimental to the minor to return him to mother's care. It recommended that the court continue family reunification services for mother. The Department also stated that, pending the results of the paternity test involving J.C., it would potentially continue with its assessment of returning the minor to the home of J.C.

**b. May 16, 2017 First Addendum Report**

The Department advised in an addendum report May 16, 2017 (dated May 8, 2017), that it had received a criminal protective order limiting mother's contact with the minor to peaceful contact only for court-ordered visitation. The Department recommended the continuation of reunification services for mother.

**c. May 30, 2017 Second Addendum Report**

In an addendum report May 30, 2017 (dated May 25, 2017), the Department updated the issue of J.C.'s paternity test, noting that the test results showed that "the probability of paternity [was] 99.99%."

It was also reported by the Department that mother had started outpatient drug treatment services with her drug treatment counselor, Carmen Riviera, at Family and Children's Services (FCS). Mother had initially been referred to intensive outpatient services, but mother "declined these services[,] stating she felt they would stop her from completing her other classes."

The Department reported that since mother's transition to the THU, there had been issues concerning her behavior, including breaking curfew, failing to perform chores, issues concerning hygiene, and having medication in her room. The house manager advised that there was "a 'lack of compliance issue' as [mother did] not want to do her chores or cook and challenges every expectation[,] often giving excuses." The Department reported that mother had not attended 12-step meetings between April 28 and May 10, 2017, explaining she had not done so because she was adjusting to the THU.

The Department expressed concern about mother's difficulty in following the rules of her THU program. Additionally, it expressed concern about mother's failure to advise the Department about J.C.'s whereabouts after the minor was taken into protective custody, even though she had this information at the time. The Department stated: "This is very troubling because [mother] has deprived [the minor] of developing a relationship with his father and perhaps being able to bond with him over the last eight months since he was made a dependent of the Court."

**d. July 31, 2017 Third Addendum Report**

The Department in an addendum report July 31, 2017 (dated June 26, 2017), reported that mother continued to reside at the THU and had shown improvement over the past month in following house rules and fulfilling obligations. All of the drug tests

mother had taken had had negative results. She had completed the Celebrating Families Program that she had begun while living at House on the Hill. Mother had started a 52-week batterer's intervention program and reported that she had completed five sessions. She reported that she continued to attend 12-step programs.

Mother was participating in outpatient drug treatment through FCS, meeting weekly with drug treatment counselor Riviera for individual substance abuse services. Riviera advised that mother was not ready to participate in group treatment, as she "presents as someone with a history of trauma within many of her relationships." The facilitator opined that mother " 'hasn't drunk alcohol but she still has the behaviors of an alcoholic . . . . [S]he is operating as a dry alcoholic' and this also impacts her mental health and her ability to fully address her sobriety. Ms. Riviera reported that [mother] has been open[-]minded and receptive to services and she appears to be in the 'discovery stage' of treatment and still presents with 'severe symptoms.' " Riviera estimated mother's treatment time with FCS to be six months.

Mother told social worker Knapp in an interview that while mother was pregnant with the minor, J.C. told her that he did not want the minor and that he was "a 'bastard.' " After the minor was born, mother said J.C. repeatedly told her that he would not pay for a paternity test. Mother told Knapp that on the day of the October 2016 incident, she had had contact with J.C., and she had been very upset after he had been abusive, called the minor "a 'bastard' and talked about putting [him] up for adoption." Knapp asked mother why she had failed to provide the Department with information about J.C.'s whereabouts throughout the proceedings; mother admitted that she had known how to get in touch with J.C. but "stated that she was 'scared.' "

Social worker Knapp visited J.C.'s Citrus Heights residence in June 2017. J.C. lived in a two-bedroom apartment in a gated complex with his partner, their one-year-old daughter, and his partner's five-year-old daughter. Knapp reported that the home was clean, well-organized, and stocked with food. J.C. advised Knapp that he and his partner



both had cars and were employed. He said that he had made advance arrangements for child care if and when the minor was released into his custody.

Mother's visitation with the minor had gone well and she had participated in all visits. She was currently on a weekly schedule of two supervised (three hours each) and one unsupervised visit (four hours).

J.C. had his first supervised visit with the minor on May 30, 2017, which went well and J.C. was "very appropriate and attentive." Weekly Saturday visits commenced on June 3, and the first overnight visit was scheduled for July 1.

**e. July 31, 2017 Fourth Addendum Report**

The Department in an addendum report July 31, 2017 (dated July 26, 2017), reported that mother continued to (1) reside at the THU; (2) participate in FCS drug treatment services with individual treatment by facilitator Riviera; (3) attend 12-step meetings; (4) complete drug testing with negative results; and (5) attend a 52-week batterer's intervention program.

Mother continued with her regular supervised and unsupervised visits of the minor, including an all-day unsupervised visit on July 14, 2017. The current caretaker, the maternal grandfather, reported that all visits had gone well and he had observed mother being attentive to the minor's needs. The maternal grandfather stated that the minor was doing well in transitioning between houses and there had been no observable changes in the minor's eating, sleeping, or napping.

The Department reported that the minor had had overnight visits with J.C. every weekend in the month of July and all visits had gone well. J.C. advised that the minor had been adjusting well and there had been no behavioral issues. The maternal grandfather stated that he had observed J.C. and his "family to be very attentive to [the minor's] needs and that [the minor] appear[ed] calm and content when he [was] dropped off . . . and when he return[ed] from these visits. He ha[d] noted no changes in [the minor] since beginning these visits."

It was recommended by the Department that at the six-month review hearing, the court grant sole physical custody of the minor to J.C., and that mother be granted unsupervised visitation. It recommended further that the dependency be dismissed with family custody orders that would include granting full physical custody to J.C., and joint legal custody to J.C. and mother. It recommended mediation to address visitation orders. Social worker Knapp recommended that no overnight visitation of the minor with mother be granted because (1) mother did not have stable housing that would accommodate overnight visits, (2) she was “still very early in her substance abuse recovery,” and (3) she was unable to provide transportation for the visits.

## **2. *Six-Month Review Hearing***

A contested six-month review hearing occurred on July 31, 2017. The Department submitted the matter without calling any witnesses—reserving the right to call in rebuttal social worker Knapp as an expert witness in the areas of “risk assessment[, t]he provision of reunification services[, a]nd permanency planning.” The juvenile court, without challenge by counsel to Knapp’s qualifications, ordered that she could opine in the three areas identified by the Department. In its submission, the Department introduced the May 16, 2017 status report and the four addenda reports discussed, *ante*. Mother presented documentary evidence, the testimony of mother, and the testimony of Knapp and J.C.; Knapp and J.C. were examined under Evidence Code section 776.

### **a. *Documentary Evidence***

The documentary evidence submitted by mother—which this court has considered in its review of the juvenile court’s order challenged by mother—including (1) documentation of course work completed by mother in the Re-entry Correction Program in October to November 2016; (2) documents showing mother’s completion of the Celebrating Families program; (3) treatment status and THU status reports concerning mother’s performance; (4) AA meeting signup sheets; (5) photographs depicting the minor by himself and with mother; (6) a letter from Dr. Reed of March 13, 2017,

indicating that mother had been a patient since June 2016, was “compliant with her treatment plan and . . . psychiatrically stable”; (7) a declaration (redacted) of Louise Harding, certified alcohol drug counselor at House on the Hill, dated April 4, 2017; (8) a declaration (redacted) of Priscilla Erwin, an alcohol and drug counselor affiliated with House on the Hill, dated April 4, 2017; (9) e-mail from Drda dated April 16, 2017; (10) weekly progress reports from mother’s THU, Solace Supportive Living; (11) domestic violence course attendance records; and (12) a letter from Drda dated July 17, 2017.

Harding stated in her declaration that she had known mother since her entry into the House on the Hill program on January 19, 2017. Harding had worked with mother in both individual and group sessions, and mother had been an active participant in those sessions. Harding opined that mother had “been committed and dedicated to her sobriety as well as the pursuit of doing everything she [could] to have her children back in her care.” She stated that mother had a positive history at House on the Hill and had maintained her sobriety. Harding declared that mother had “gained insight into the addiction processes and ha[d] developed a number of recovery tools and continue[d] to engage in that process through her work with [Harding].”

**b. Testimony of J.C.**

J.C. testified during examination by mother’s counsel that he had sent abusive texts to mother in 2016. In a July 2016 text to mother, J.C. stated: “ ‘I have not received any paperwork for paternity tests and you keep sending pictures as if I’m going to be part of his life. He’s already a year old, and I am still unsure if he’s mine. So again, you can have your [fiancé] adopt him.’ ”<sup>6</sup>

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<sup>6</sup> J.C. testified that the texts and other communications in 2016 between mother and him “were back and forth being vulgar.”

J.C. admitted that he had sustained two drunk driving convictions, one in 2004 in New Jersey while he was in military service, and the second in California in 2008. He told the social worker in the dependency proceedings about the two convictions. J.C. had participated in a court-mandated six-month driving under the influence program, including attendance at AA meetings in 2008 to 2009, in connection with the second conviction. In connection with the 2008 conviction, J.C. had rolled his car and it had caught on fire; he was the only person in the vehicle.

J.C. testified that he does not currently drink alcohol and his fiancée does not drink alcohol. His only other interaction with the police since the second conviction was a moving violation. J.C. testified later upon further cross-examination by mother's counsel that he had contact with the police while mother and he were living together in Citrus Heights. J.C. explained that mother had become "drunk and . . . belligerent" and his older daughter was present in the house at the time. During a verbal argument, J.C. locked himself in a bedroom. Mother broke down the door and struck him in the back of the head. J.C. at that point called the police. He testified he had not been drinking.

During examination by his counsel, J.C. testified that he had not been informed by mother about the minor's dependency proceeding. He learned about the proceeding from the father of another child of mother's. That person gave him social worker Knapp's telephone number. J.C. then contacted Knapp and was provided information about the proceeding. Before that time, J.C. had contacted mother on multiple occasions to attempt to get a DNA test because she had told him she was pregnant. J.C. testified that there was a child support case pending and he had completed his portion of the DNA testing. He understood that the test in the child support proceeding was never completed because mother had not participated.

J.C. had been steadily employed since 2013. He had been working for Terminix as a service professional for one and one-half years. Before that time, he worked as a

unionized forklift operator. At the time of the hearing, he was still a licensed forklift operator.

J.C. testified that he had had approximately one month of overnight visits with the minor. The maternal grandfather brought the minor to Citrus Heights on Saturdays and J.C. returned him to the maternal grandfather in San Jose on Sundays. The visits were “great,” and the minor got along well with him, his fiancée, and the children in their home. The minor had begun calling J.C. “ ‘Daddy’ ” or “ ‘Dad’ ” more frequently and talked to J.C. “more nonstop.” J.C. said that his family supported his desire to obtain custody of the minor and “[t]hey love him.”

J.C. testified that if he were granted custody, he planned to enroll the minor in the day care/school facility that his daughter—who was the minor’s age—attended. J.C. stated that if he were awarded custody, he was willing to work to facilitate the minor’s visitation with mother, despite the distance between his and mother’s respective homes. He also testified that he was agreeable with the Department’s recommendation that he and mother share legal custody of the minor.

**c. Testimony of Social Worker Terese Knapp**

Social worker Knapp testified during examination by mother’s counsel that mother had complied with all random drug testing and that the results of all tests were negative. Knapp confirmed that mother had completed the Celebrating Families Program; attended AA meetings and provided confirming documentation to the Department; voluntarily participated in the court-sponsored Dependency Wellness Course (DWC); complied with the Department’s directive of moving from House on the Hill to the THU; and regularly attended meetings with her FCS outpatient drug treatment counselor, Riviera.

Knapp testified that there are different types of outpatient drug treatment services, including intensive outpatient services (IOP), and “regular” outpatient services that typically involve weekly group sessions. It was generally the inpatient drug treatment provider, not the Department, that recommends the type of outpatient services appropriate

for a client. Here, the inpatient drug treatment provider recommended that mother receive IOP, but mother chose to participate in regular outpatient services.

Knapp testified that mother did not disclose to the Department investigator that there was an ongoing child support case involving the minor during the initial stages of the dependency investigation. Mother never provided the Department with information as to how to get in touch with J.C. (e.g., text, email, Facebook profile or address).

It was Knapp's assessment that there were no risks associated with a July 31, 2017 release of the minor into J.C.'s care, but there were risks associated with the potential July 31, 2017 release of the minor to mother's care. Knapp identified the risks of releasing the minor to mother as including that (1) mother was still in the early stages of her drug treatment services; (2) "there were barriers to her fully integrating her sobriety that needed to be addressed in individual counseling before she could begin the group session part of the Family and Children Services program which is usually the way clients do outpatient"; (3) Knapp had not yet assessed mother's current living situation, having been informed very recently that mother had left the THU and was living in the home of the maternal grandmother; (4) the minor's potential residence in the maternal grandmother's home was concerning due to the alcohol use in the home and because it had been the site of multiple instances of domestic violence, including the January 2016 incident resulting in mother's battery conviction; (5) mother could not transport the minor; (6) mother's therapist, Drda, had advised that she could not provide the Department with a time frame for resolving mother's trauma issues that were preventing her from transitioning into FCS group therapy; (7) the totality of mother's alcohol abuse history, including her having been convicted in March 2016 of a violent crime involving alcohol; and (8) mother was in the early stages of her participation in the 52-week batterer's intervention program, a program that was a required probation condition in connection with her March 2016 criminal conviction.

**d. Testimony of Mother**

Mother testified that within two weeks before the hearing, she had left the THU and had moved to her mother's (R.D.'s) home. She did so because she needed to obtain a place for the minor to live. She also testified that the THU had "started to become unsupportive." Mother planned to move the day of the hearing to her uncle's home, where there was a room available for her. She described it as a clean and sober environment. Mother testified that her uncle had been sober for more than 20 years and attended meetings, and that the other occupant, her older cousin, did not drink. Her uncle's home was ideally located for mother because it was close to public transportation, was close to where she attended her weekly therapy sessions and monthly appointments with her psychiatrist, and it was close to the DWC program she attended biweekly. Mother testified that there was enough room there for the minor.

On cross-examination, mother admitted that the day of the hearing was the first time she had informed the social worker about her planned move to her uncle's home; mother had not given the Department any information about the environment of this prospective home. She also admitted that R.D.'s home where mother currently lived was where her brother—who lived in the home—struck her (mother) in the back of the head. Both she and her brother were intoxicated during this March 2016 incident, and the minor was in the home when it occurred. Mother was required to seek medical care at the hospital for her injuries. While being treated at the hospital, mother "passed out."

Mother explained that her plans moving forward if the court were to award her custody were to remain sober for the rest of her life, to keep her and the minor together, and to return to work in the medical field.

Mother testified that she had never refused IOP. She agreed on cross-examination that she had been originally referred to IOP after leaving House on the Hill, and she had expressed concern that the IOP's three days per week requirements would make it

difficult for her to manage her other obligations, including other therapy and going to court regarding her newborn daughter.

Mother had recently (within the past two weeks) obtained a new sponsor, who was in Europe as of the time of the hearing. Mother stated that her prior sponsor had not been very supportive. Mother was working on her steps, and she was on her fourth step at the time of the hearing.

Mother testified that one of the conditions of probation in connection with her March 2016 battery conviction was her completion of a 52-week batterer's intervention program. She had started the program in May 2017.

The criminal charges of driving under the influence and child endangerment related to her October 2016 collision with a parked police car were still pending at the time of the hearing. Mother testified that she was contesting the charges. There was a protective order issued in that criminal case that permitted peaceful contact with the minor for court-ordered visitation but prohibited mother from driving the minor anywhere.

Regarding the incident with J.C. in Citrus Heights, mother testified that they had both been drinking that day and had been arguing. It was J.C., not her, who kicked down the door, and he grabbed her phone out of her hand. She testified that the door was not locked; J.C. had closed it but had not locked it before breaking it down. Mother testified that she did not know who had called the police. After the police arrived, J.C. told them that mother had kicked down the door. Mother explained that he had done so to force her to move out of the apartment.<sup>7</sup>

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<sup>7</sup> Mother initially testified that she had not told the police that J.C. had broken down the door. Shortly afterward in her testimony, she testified that she *had* told police that J.C. had "broke[n] down the door."



**e. Court's Order**

At the conclusion of testimony and argument on July 31, 2017, the court continued the matter to the next day. At the proceedings on August 1, the court announced its decision. Acknowledging the significant efforts made by mother, the court concluded the Department's recommendations were appropriate. It found that the minor could safely be returned to J.C. and there was no need for further involvement of the dependency court. A minute order was entered on August 1.<sup>8</sup> After some discussion concerning mediation of visitation matters, the court continued the case for further proceedings to August 2.

After hearing argument concerning visitation, and after the parties met and conferred concerning the terms of a visitation order, the court entered an order, reflected in an August 2 minute order, concluding that (1) conditions no longer existed that justified assumption of jurisdiction by the dependency court, and (2) return of the minor to J.C. would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. It ordered the minor returned to J.C.'s physical custody, the jurisdiction over the family be terminated, and a custody order and final judgment be adopted. In a formal custody order and judgment signed by the court on August 2 and filed August 7, it was provided that J.C. would have physical custody of the minor and that J.C. and mother would share legal custody. That order specified further that mother would receive overnight visitation two weekends per month in San Jose, and she would have the right to daytime visitation of the minor in Sacramento County on Thursdays.

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<sup>8</sup> In announcing its decision, the court indicated that "[t]he JV-180 [petition] filed by mother for return is denied." The minute order of August 1 recited that the court "DENIES the 388 Petition filed by the mother." Since the court had previously (on May 9, 2017) denied without prejudice mother's request to change court order pursuant to section 388, and no formal petition was outstanding, it is clear that the court's order was in fact an order after six-month review hearing denying mother's request for return of the minor to her care.

Mother filed a notice of appeal that specified it was from, inter alia, the orders entered August 1 and August 2, 2017.<sup>9</sup> We will construe the notice of appeal as a challenge to the juvenile court orders (i.e., the August 1 minute order, the August 2, minute order, and the formal order and judgment filed August 7, 2017). An order after a six-month review hearing is reviewable by appeal. (*In re T.G.* (2010) 188 Cal.App.4th 687, 692 [juvenile court “ ‘dispositional and following orders are directly appealable’ ”].) Likewise, an order awarding custody and terminating dependency proceedings is appealable. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

## **II. DISCUSSION**

### **A. Denial of Minor’s Return to Mother (Detriment Finding)**

#### **1. *Applicable Law***

Once there has been an adjudication that a child is a dependent of the juvenile court, the exclusive procedure for establishing the permanent plan for the child is the selection and implementation hearing as provided under section 366.26 (366.26 hearing). Prior to the 366.26 hearing, there are periodic status reviews as ordered by the court, but not less frequently than every six months. (§ 366, subd. (a)(1).)

“At the review hearing held 6 months after the initial dispositional hearing, . . . the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.21, subd. (e)(1); see *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249

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<sup>9</sup> The notice of appeal also identified 2017 orders of the juvenile court dated April 17, May 9, May 30, June 25, June 28, July 11, July 24, and July 31. Mother’s appellate briefs do not specify any challenges to these eight orders, and, accordingly, any appeal as to those orders is deemed abandoned. (*Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 761, fn. 4 [appellate arguments “neither timely nor fully made” deemed forfeited].)

[§ 366.21, subd. (e) creates “statutory presumption that the child will be returned to parental custody” absent finding that return would create substantial risk of detriment to child].) “The parent’s failure ‘to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental.’ [Citation.] In making its determination, the court must consider the efforts and progress shown by the parent and the extent to which the parent availed himself or herself of services provided. [Citation.]” (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 61.) Although the parents’ compliance with the reunification plan is a matter which must be considered by the court, “it is not determinative. The court must also consider the parents’ progress and their capacity to meet the objectives of the plan; otherwise the reasons for removing the children out-of-home will not have been ameliorated.” (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143.)

In reviewing an order after a six-month review hearing, we determine whether there was substantial evidence to support the juvenile court’s conclusion that the return of the dependent child to the parent would create a substantial risk of detriment to that child. (*In re Mary B.* (2013) 218 Cal.App.4th 1474, 1483.) In conducting such evaluation of the evidence, we view it in a light “most favorabl[e] to the prevailing party and indulge in all legitimate and reasonable inferences to uphold the court’s ruling. [Citation.]” (*Ibid.*) “We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record in favor of the juvenile court’s order and affirm the order even if other evidence supports a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. [Citation.]” (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161-1162.)

## **2. Detriment Finding Supported by Substantial Evidence**

Mother contends that the juvenile court erred in denying her request that the minor be returned to her custody and care. She argues that “[i]n August 2017, there was no

substantial evidence before the court of detriment in returning the minor to his mother. Instead, the evidence showed [m]other had done everything asked of her and posed no risk to her child.” In support of this claim, mother asserts that she had participated in both inpatient and outpatient substance abuse treatment programs; had met with her substance abuse counselor; had participated in mental health services, including therapy; had completed the celebrating families program; had attended 12-step meetings; had a sponsor; had completed parenting course work; “was psychiatrically stable”; had commenced participating in a batterer’s intervention program; and had consistently submitted to drug tests with negative test results. She contends further that her consistent and positive visitation with the minor and his strong attachment with her undercut the juvenile court’s detriment conclusion.

The juvenile court did not err. Mother admittedly showed many positive developments—as listed in the preceding paragraph—in the nine months that had elapsed since the minor was detained in October 2016. Mother had actively participated in her case plan and, importantly, had maintained her sobriety. The juvenile court itself acknowledged mother’s efforts and commitment: “The mother has made great efforts. She’s motivated. And she’s done a lot. There’s no question about that.” Nonetheless, there was substantial evidence supporting the court’s conclusion that releasing the minor into mother’s custody and care posed a substantial risk of detriment to him.

The serious nature of mother’s substance abuse was a key aspect of the substantial evidence supporting the juvenile court’s finding of detriment. The court emphasized that mother had “a serious history of substance abuse and violence.” There was ample evidence supporting this statement. Mother herself admitted she had started drinking alcohol when she was 15 years old, and that her drinking had progressed after her August 2012 gastric surgery. She also admitted to “feeling ‘depressed’ ” and that she “turn[ed] to alcohol to cope with that depression and to replace her meals.” Her mother, R.D., advised the Department that mother could not control her drinking because of her

depression and her bipolar disorder. R.D. noted that mother would disappear with the minor on binge drinking outings. And R.D., because of her concerns about mother's substance abuse issues, took the rather extreme measure after the minor's birth of taking her daughter's car keys, removing the car battery, and registering it as inoperable to prevent mother's driving while intoxicated.

The fact that there were three major incidents within the first 10 months of 2016 involving alcohol abuse and criminal acts—two of which incidents having involved violence—further evidenced the seriousness of mother's substance abuse.<sup>10</sup> The first incident in January—in which mother, while intoxicated, assaulted R.D. while the minor was in the home—resulted in mother's prosecution and conviction for battery. The evidence showed that she performed poorly on probation after that conviction. The second incident in March, occurring while the minor was in the home, involved mother being struck in the head by her brother while they were both intoxicated. Although she declined to press charges against him, the assault required her to be treated at the hospital, where she lost consciousness. And the third incident in October—in which mother collided with a parked patrol vehicle after she chose to drive with her young son unrestrained in the back seat while she had a blood-alcohol concentration of nearly twice the legal limit—dramatically underscored the seriousness of mother's substance abuse

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<sup>10</sup> Additionally, there was evidence of mother's earlier alcohol abuse leading to her performing acts of violence in the presence of a minor child. J.C. testified that around Thanksgiving of 2014, mother became "drunk and . . . belligerent" at their shared apartment in Citrus Heights and, in the presence of J.C.'s daughter, broke down a bedroom door and struck J.C. in the back of the head, necessitating his calling the police. Mother admitted in her testimony that she was intoxicated and did not deny she had struck J.C. While she denied that she had broken down the door, we view the evidence in a light "most favorabl[e] to the prevailing party" (*In re Mary B.*, *supra*, 218 Cal.App.4th at p. 1483), and, in deference to the juvenile court, we eschew resolving evidentiary conflicts or witness credibility determinations. (*In re T.W.*, *supra*, 214 Cal.App.4th at pp. 1161-1162.)

issues. As Probation Officer Rice accurately noted, the manifestation of mother's substance abuse issues was " 'escalating' " by the fall of 2016.

The juvenile court also based its detriment finding by reasoning that "relatively speaking, . . . [mother was in] the early stages of sobriety. . . [and] in the early stages of coping." In this regard, the court emphasized mother's substance abuse history, the fact that she had "a current diagnosis of major depressive disorder," she had been out of residential treatment for only two months, and she had only been out of the THU for a short time.

There was significant evidentiary support for the court's conclusion that mother was in the "early stages of sobriety. . . [and] . . . coping." It was apparent that mother had not been forthright with her therapist or her psychiatrist concerning the details of the events resulting in the minor's detention. The Department had expressed concern about mother's minimizing her alcohol use and its impact on her ability to safely parent the minor. Mother's drug treatment counselor, Riviera, advised the Department in June 2017 that mother presented "with 'severe symptoms,' " and although she was sober, mother " 'still ha[d] the behaviors of an alcoholic . . . [and] operat[ed] as a dry alcoholic.' " Riviera opined that, because of mother's "present[ation] as someone with a history of trauma within many of her relationships," she was not ready to participate in group treatment. Riviera estimated that mother would require six months of drug treatment. Similarly, mother's therapist, Drda, told social worker Knapp that she could not estimate when mother's trauma issues would resolve so that she could transition into FCS group therapy. It was also noteworthy that although mother had regularly attended AA meetings, she was working on the fourth step and had a new sponsor who, as of the time of the hearing, was unavailable. And mother—as recognized by the juvenile court—had not completed three-quarters of her 52-week batterer's intervention program; completion of this program had been originally imposed as a probation condition approximately

16 months earlier, and mother had only started taking the course in May 2017, more than a year after her conviction.

As noted by social worker Knapp in her testimony, uncertainty regarding the home environment to which the minor would be exposed if he were released into mother's custody was an additional significant factor in assessing potential detriment. A short time before the hearing, mother had left the THU to return to live in the home of the maternal grandmother, R.D. This was the same home that mother had described to her probation officer as one in which it was hard for her to remain sober because there was "a lot of drinking." Most notably, R.D.'s home was the site of two alcohol-fueled incidents of violence, namely, mother's January 2016 assault of R.D. resulting in mother's conviction, and the March 2016 assault of mother by her brother; mother was intoxicated on both occasions. Because of the recentness of mother's move, the Department had not yet assessed the safety and suitability of R.D.'s home. Likewise, although mother testified that her uncle's home where she planned to move the day of the hearing was appropriate for the minor, mother's plans were not revealed until the hearing, so the Department had no opportunity to assess the uncle's home.

It is also notable that mother's involvement in the criminal justice system provided uncertainty regarding the stability of the minor's potential return to mother's care. Mother was still on probation as a result of her March 2016 conviction. She was facing driving under the influence and child endangerment charges, which she was contesting; this resulted in further uncertainty regarding her ability in the near future to care for the minor.

Moreover, there was expert testimony—unrebutted by any expert testimony presented on mother's behalf—upon which the juvenile court could have based its finding of detriment. Social worker Knapp testified that there were risks associated with the potential release of the minor to mother's care. The grounds for this assessment as described by Knapp included the issues identified immediately above, including (1) the

totality of mother's alcohol abuse history as well as her conviction of a violent crime involving alcohol use; (2) mother's being in the early stages of drug treatment services, including her having completed less than one-quarter of her participation in the 52-week batterer's intervention program; (3) mother's therapist, Drda, having advised that she could not provide the Department with a time frame for resolving mother's trauma issues that were preventing her from the natural transition into group therapy; and (4) mother's new living situation and her stated intention to move to her uncle's home, neither home having been assessed for its suitability and with there being significant concerns about R.D.'s home.

In support of her position, mother cites *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322 (*Jennifer A.*), a case which she describes as one having a similar "factual scenario" to this case. In *Jennifer A.*, the appellate court reversed the juvenile court's finding of detriment at the 18-month review hearing resulting in the termination of the mother's services and setting a 366.26 hearing. (*Jennifer A.*, *supra*, at pp. 1345-1346.) There, the mother's two children, then five years old and 18 months old, were taken into protective custody after they were found unattended in a motel room that the mother had rented. (*Id.* at p. 1328.) The children had been removed after the mother's lapse of judgment in which "she had left them alone on one occasion because she had to go to work. Mother had arranged for Father to take care of the children, but his car broke down, and he failed to arrive before Mother had to leave." (*Id.* at pp. 1343-1344.) In concluding that the juvenile court's finding of detriment was not supported by substantial evidence, the *Jennifer A.* court emphasized a number of facts concerning the mother which stand in stark contrast to the circumstances presented here, including the *Jennifer A.* mother (1) being "gainfully employed in a responsible position" with the same employer for more than two years; (2) having current living conditions about which no concerns had been noted; (3) having never been incarcerated; (4) having no mental illness issues; (5) having not displayed evidence of clinical substance abuse; (6) having not been



diagnosed by a professional as having a substance abuse problem; (7) having never drunk alcohol or used drugs in the children's presence; and (8) never having any parenting judgment or skills been impaired by alcohol or drug use. (*Id.* at pp. 1345-1346.) The facts in *Jennifer A.* are distinguishable, and the case offers no support for mother's position.

It is clear from the record that mother had made significant strides in maintaining her sobriety and had committed to working her case plan. It is also very apparent to this court that mother loves the minor very much. The juvenile court, however, did not err in denying her request for return of the minor. There was substantial evidence supporting the juvenile court's conclusion by a preponderance of the evidence that it was inappropriate to return the minor to mother's custody and care because doing so would create a substantial risk of detriment to his safety, protection, or physical or emotional well-being.

## **B. Termination of Jurisdiction and Exit Orders**

### **1. *Applicable Law***

The juvenile court may issue an order terminating its jurisdiction over a dependent child, and in doing so it may make an order "determining the custody of, or visitation with, the child." (§ 362.4, subd. (a); see also § 304 [juvenile court has exclusive jurisdiction to make custody orders over dependent children].) Such orders concerning custody and visitation are often referred to as " 'exit orders.' " (*In re T.H.* (2010) 190 Cal.App.4th 1119, 1122.) "When making a custody determination in any dependency case, the court's focus and primary consideration must always be the best interests of the child. [Citations.] Furthermore, the court is not restrained by 'any preferences or presumptions.' [Citations.] Thus, for example, a finding that neither parent poses any danger to the child does not mean that both are equally entitled to half custody, since joint physical custody may not be in the child's best interests for a variety of reasons. [Citation.] By the same token, a finding that the parent from whom custody was removed

no longer poses a risk of detriment or that the parent whose custody has been subject to supervision no longer requires supervision is relevant to, but not necessarily determinative of, the best interests of the child.” (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.)

Ordinarily, a juvenile court’s order terminating dependency proceedings and making a custody award is reviewed for abuse of discretion. (*In re Stephanie M., supra*, 7 Cal.4th at p. 318.)<sup>11</sup> An appellate court “may not disturb the order unless the court “ “exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].’ ” ’ [Citations.]” (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300-301 (*Bridget A.*)).

## **2. No Abuse of Discretion**

The record contained strong support for the court’s implicit finding that awarding custody to J.C. was in the best interests of the minor. There was undisputed evidence that the prospective placement was a stable home for the minor. J.C. lived in an apartment in a gated complex with his fiancée, their one-year-old daughter, and his fiancée’s five-year-old daughter. J.C. and his fiancée were both employed and had automobiles. J.C. also had a separate skill—being a licensed forklift operator—that may have provided him with some employment flexibility. Further, J.C. had made arrangements in advance to provide care during weekdays for the minor at the “daycare/school” that his one-year-old daughter attended. And social worker Knapp concluded after a home visit in June 2017 that J.C.’s apartment was clean, well-organized, and was stocked with food. She further

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<sup>11</sup> Citing *In re Jennifer R.* (1993) 14 Cal.App.4th 704, mother urges that custody orders by the juvenile court are subject to “a mixed standard of review combining the abuse of discretion and substantial evidence standards of review.” Even were we to read *Jennifer R.* as so holding, we follow the Supreme Court’s holding in *In re Stephanie M., supra*, 7 Cal.4th at page 318 (decided subsequent to *Jennifer R.*) that such custody orders are reviewed for abuse of discretion.

opined at the hearing that there were no risks associated with releasing the minor into J.C.'s care.

The Department was aware of J.C.'s two misdemeanor driving under the influence convictions from 2004 and 2008, J.C. having disclosed them to the Department. The Department conducted child welfare and criminal record searches concerning J.C. It determined that there were no criminal convictions other than those J.C. disclosed and there was "no reported CPS history for [J.C.] or for any of his children." The court did not disregard J.C.'s criminal history in determining that awarding physical custody was in the best interests of the minor. Rather, the juvenile court judge concluded, "I think he's made some terrible mistakes in the past, but I think he's not a risk currently, so I have confidence that [the minor] can be placed with him."

Moreover, visitation by the minor with J.C.'s family, including overnight visitation, had been very positive and had not disclosed any potential placement risks. The visits had, admittedly, begun not long before the hearing. But the record is clear that this was not the result of neglect or lack of interest by J.C.; instead, it was caused by mother's failure to advise the Department of J.C.'s whereabouts and of the pending child support proceeding, notwithstanding her knowledge of this information. According to all information available, including statements by the maternal grandfather who was the minor's caregiver, the visits were very successful, the minor had exhibited no adverse behavioral responses to them, and he was bonding with J.C.

On appeal, mother emphasizes J.C.'s alcohol-related criminal convictions and argues that social worker Knapp "admitted she did basically zero investigation or risk assessment on [J.C.]." Mother contends that these matters undercut Knapp's opinion that placement of the minor in J.C.'s physical custody posed no risk. But the juvenile court specifically recognized that J.C. had made some significant mistakes in the past. Based upon all the evidence before it, however, the court concluded that placement with J.C. did not pose a present risk. And while Knapp conceded on cross-examination by

mother's counsel that she did not inquire about several matters concerning J.C.'s background,<sup>12</sup> it is incorrect to suggest (as claimed by mother) that Knapp "admitted she did basically zero investigation or risk assessment on [J.C.]."

Based upon the record before us, we conclude that the juvenile court did not abuse its discretion by awarding physical custody of the minor to J.C. and terminating the dependency. There is nothing that demonstrates that the juvenile "court ' " 'exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].' " ' [Citations.]" (*Bridget A., supra*, 148 Cal.App.4th at pp. 300-301.)

### **III. DISPOSITION**

The juvenile court's orders dated August 1, 2017, August 2, 2017, and August 2, 2017 (filed August 7, 2017), after the six-month review hearing, terminating the dependency proceeding, and making exit orders involving custody and visitation, are affirmed.

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<sup>12</sup> The specific matters discussed in the cross-examination of Knapp involved (1) her not procuring any police reports or information about the blood-alcohol concentration involved in J.C.'s two driving under the influence convictions; (2) her not inquiring into the circumstances surrounding J.C.'s honorable discharge from the Air Force; (3) her not inquiring whether J.C. had in the past taken any anger management classes; (4) her not referring J.C. to any anger management classes; and (5) her not conducting any random alcohol testing of J.C.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MIHARA, J.

*In re E.D.; DFCS v. E.D.*  
**H044976**